

**NOT RECOMMENDED FOR FULL-TEXT PUBLICATION**

No. 09-5493

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Nov 12, 2009  
LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
CALVIN LEE GODDARD,	)	THE EASTERN DISTRICT OF
	)	KENTUCKY
Defendant-Appellant.	)	

O R D E R

Before: MERRITT, MARTIN, and COLE, Circuit Judges.

Calvin Lee Goddard, a federal prisoner proceeding pro se, appeals the judgment of the district court denying his motion for release pending appeal. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Goddard entered a guilty plea to one count of attempt to possess with intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. 841(a)(1). The district court sentenced him to a term of imprisonment of 180 months. Goddard then filed a direct appeal, which is currently pending in this court (Case No. 09-5120). On April 1, 2009, Goddard filed the instant motion for bail pending appeal, which the district court denied. Goddard now appeals.

We review a decision denying bond or bail pending appeal under an abuse of discretion standard. *See United States v. Chilingirian*, 280 F.3d 704, 709 (6th Cir. 2002). In 18 U.S.C. § 3143(b)(2), Congress declared that any person who has been found guilty of a crime of drug

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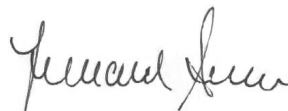
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trafficking, among other offenses, “shall” be detained pending appeal. *United States v. Lanier*, 120 F.3d 640, 642 (6th Cir. 1997) (Nelson, J., concurring). There are exceptions to this statutory mandate, but the exceptions are narrow and, in no event, may a person who is subject to detention under § 3143(b)(2) be released pending appeal unless he shows by clear and convincing evidence: 1) that he is not likely to flee or pose a danger to the safety of another person or the community; 2) that the appeal is not for delay and raises a substantial question of law or fact likely to result in reversal, an order for new trial, a sentence that does not include a term of imprisonment, or a sentence reduced to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process; and 3) that there are exceptional reasons why defendant’s detention would not be appropriate. 18 U.S.C. §§ 3143(b)(1) and 3145(c); *Chilingirian*, 280 F.3d at 709.

The district court did not abuse its discretion by concluding that Goddard’s motion did not establish his entitlement to release pending appeal. Goddard does not contend that he is not likely to flee or that his appeal raises a substantial question of law or fact. Although Goddard cites exceptional medical reasons that allegedly require his release pending appeal in his reply brief, these facts were not raised in his motion before the district court and may not be considered on appeal. *See J.C. Wyckoff & Assoc., Inc. v. Standard Fire Ins. Co.*, 936 F.2d 1474, 1488 (6th Cir. 1991). Moreover, in Goddard’s pending direct appeal, a panel of this court has already denied a motion by Goddard to remand his case for an evidentiary hearing on his motion for bail pending appeal on the basis that Goddard was subject to mandatory detention under § 3143(b)(2).

The judgment of the district court is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT



Leonard Green  
Clerk